

AMENDED IN SENATE AUGUST 24, 2006

AMENDED IN SENATE JUNE 15, 2006

AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 225

Introduced by Assembly Member Negrete McLeod

February 3, 2005

An act to amend Section 650 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 225, as amended, Negrete McLeod. Electronic prescription information.

Existing law relative to insurance fraud makes it a crime for healing arts practitioners to receive money or other consideration for, or to engage in various related activities with respect to, the referral of patients, clients, or customers to any person, with certain exceptions.

This bill would, upon the effective date of specified regulations adopted by the Secretary of the United States Department of Health and Human Services pursuant to the Medicare Prescription Drug, Improvement and Modernization Act of 2003, exempt from these provisions specified entities that receive nonmonetary remuneration necessary and used solely to receive and transmit electronic prescription information, under certain conditions. The bill would require the California Health and Human Services Agency to, if necessary, adopt emergency regulations to ensure that implementation of this exemption is consistent with the regulations adopted by the United States Department of Health and Human Services.

This bill would incorporate additional changes to Section 650 of the Business and Professions Code, proposed by AB 2282, to be operative only if AB 2282 and this bill are both chaptered and become effective on or before January 1, 2007, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 650 of the Business and Professions
2 Code is amended to read:
3 650. (a) Except as provided in Chapter 2.3 (commencing
4 with Section 1400) of Division 2 of the Health and Safety Code,
5 the offer, delivery, receipt, or acceptance by any person licensed
6 under this division or the Chiropractic Initiative Act of any
7 rebate, refund, commission, preference, patronage dividend,
8 discount, or other consideration, whether in the form of money or
9 otherwise, as compensation or inducement for referring patients,
10 clients, or customers to any person, irrespective of any
11 membership, proprietary interest or coownership in or with any
12 person to whom these patients, clients, or customers are referred
13 is unlawful.
14 (b) The payment or receipt of consideration for services other
15 than the referral of patients which is based on a percentage of
16 gross revenue or similar type of contractual arrangement shall not
17 be unlawful if the consideration is commensurate with the value
18 of the services furnished or with the fair rental value of any
19 premises or equipment leased or provided by the recipient to the
20 payer.
21 (c) Except as provided in Chapter 2.3 (commencing with
22 Section 1400) of Division 2 of the Health and Safety Code and in
23 Sections 654.1 and 654.2, it shall not be unlawful for any person
24 licensed under this division to refer a person to any laboratory,
25 pharmacy, clinic (including entities exempt from licensure
26 pursuant to Section 1206 of the Health and Safety Code), or
27 health care facility solely because the licensee has a proprietary
28 interest or coownership in the laboratory, pharmacy, clinic, or
29 health care facility; provided, however, that the licensee's return
30 on investment for that proprietary interest or coownership shall
31 be based upon the amount of the capital investment or

1 proportional ownership of the licensee which ownership interest
2 is not based on the number or value of any patients referred. Any
3 referral excepted under this section shall be unlawful if the
4 prosecutor proves that there was no valid medical need for the
5 referral.

6 (d) (1) Except as provided in Chapter 2.3 (commencing with
7 Section 1400) of Division 2 of the Health and Safety Code and in
8 Sections 654.1 and 654.2, it shall not be unlawful to provide
9 nonmonetary remuneration, in the form of hardware, software, or
10 information technology and training services, necessary and used
11 solely to receive and transmit electronic prescription information
12 in accordance with the standards set forth in Section 1860D-4(e)
13 of the Medicare Prescription Drug, Improvement and
14 Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) in the
15 following situations:

16 (A) In the case of a hospital, by the hospital to members of its
17 medical staff.

18 (B) In the case of a group medical practice, by the practice to
19 prescribing health care professionals that are members of the
20 practice.

21 (C) In the case of Medicare prescription drug plan sponsors or
22 Medicare Advantage organizations, by the sponsor or
23 organization to pharmacists and pharmacies participating in the
24 network of the sponsor or organization and to prescribing health
25 care professionals.

26 (2) The exceptions set forth in this subdivision are adopted to
27 conform state law with the provisions of Section 1860D-4(e)(6)
28 of the Medicare Prescription Drug, Improvement and
29 Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) and are
30 limited to drugs covered under Part D of the federal Medicare
31 Program that are prescribed to Part D eligible individuals (42
32 U.S.C. Sec. 1395w-101).

33 (3) The exceptions set forth in this subdivision shall not be
34 operative until the regulations required to be adopted by the
35 Secretary of the United States Department of Health and Human
36 Services, pursuant to Section 1860D-4(e) of the Medicare
37 Prescription Drug, Improvement and Modernization Act of 2003
38 (42 U.S.C. Sec. 1395W-104) are effective. If the California
39 Health and Human Services Agency determines that regulations
40 are necessary to ensure that implementation of the provisions of

1 paragraph (1) is consistent with the regulations adopted by the
2 Secretary of the United States Department of Health and Human
3 Services, it shall adopt emergency regulations to that effect.

4 (e) “Health care facility” means a general acute care hospital,
5 acute psychiatric hospital, skilled nursing facility, intermediate
6 care facility, and any other health facility licensed by the State
7 Department of Health Services under Chapter 2 (commencing
8 with Section 1250) of Division 2 of the Health and Safety Code.

9 (f) A violation of this section is a public offense and is
10 punishable upon a first conviction by imprisonment in the county
11 jail for not more than one year, or by imprisonment in the state
12 prison, or by a fine not exceeding fifty thousand dollars
13 (\$50,000), or by both that imprisonment and fine. A second or
14 subsequent conviction is punishable by imprisonment in the state
15 prison or by imprisonment in the state prison and a fine of fifty
16 thousand dollars (\$50,000).

17 *SEC. 2. Section 650 of the Business and Professions Code is*
18 *amended to read:*

19 650. (a) Except as provided in Chapter 2.3 (commencing
20 with Section 1400) of Division 2 of the Health and Safety Code,
21 the offer, delivery, receipt, or acceptance by any person licensed
22 under this division or the Chiropractic Initiative Act of any
23 rebate, refund, commission, preference, patronage dividend,
24 discount, or other consideration, whether in the form of money or
25 otherwise, as compensation or inducement for referring patients,
26 clients, or customers to any person, irrespective of any
27 membership, proprietary interest or coownership in or with any
28 person to whom these patients, clients, or customers are referred
29 is unlawful.

30 (b) The payment or receipt of consideration for services other
31 than the referral of patients which is based on a percentage of
32 gross revenue or similar type of contractual arrangement shall not
33 be unlawful if the consideration is commensurate with the value
34 of the services furnished or with the fair rental value of any
35 premises or equipment leased or provided by the recipient to the
36 payer.

37 (c) *The offer, delivery, receipt, or acceptance of any*
38 *consideration between a federally-qualified health center, as*
39 *defined in Section 1396d(l)(2)(B) of Title 42 of the United States*
40 *Code, and any individual or entity providing goods, items,*

1 *services, donations, loans, or a combination thereof, to the health*
2 *center entity pursuant to a contract, lease, grant, loan, or other*
3 *agreement, if that agreement contributes to the ability of the*
4 *health center entity to maintain or increase the availability, or*
5 *enhance the quality, of services provided to a medically*
6 *underserved population served by the health center, shall not be*
7 *unlawful if the transaction otherwise meets the requirements of*
8 *the safe harbor from the federal antikickback statute in Section*
9 *1320a-7b(b)(3) of Title 42 of the United States Code and*
10 *regulations adopted thereunder.*

11 (d) Except as provided in Chapter 2.3 (commencing with
12 Section 1400) of Division 2 of the Health and Safety Code and in
13 Sections 654.1 and 654.2, it shall not be unlawful for any person
14 licensed under this division to refer a person to any laboratory,
15 pharmacy, clinic (including entities exempt from licensure
16 pursuant to Section 1206 of the Health and Safety Code), or
17 health care facility solely because the licensee has a proprietary
18 interest or coownership in the laboratory, pharmacy, clinic, or
19 health care facility; provided, however, that the licensee's return
20 on investment for that proprietary interest or coownership shall
21 be based upon the amount of the capital investment or
22 proportional ownership of the licensee which ownership interest
23 is not based on the number or value of any patients referred. Any
24 referral excepted under this section shall be unlawful if the
25 prosecutor proves that there was no valid medical need for the
26 referral.

27 (e) (1) *Except as provided in Chapter 2.3 (commencing with*
28 *Section 1400) of Division 2 of the Health and Safety Code and in*
29 *Sections 654.1 and 654.2, it shall not be unlawful to provide*
30 *nonmonetary remuneration, in the form of hardware, software,*
31 *or information technology and training services, necessary and*
32 *used solely to receive and transmit electronic prescription*
33 *information in accordance with the standards set forth in Section*
34 *1860D-4(e) of the Medicare Prescription Drug, Improvement*
35 *and Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) in*
36 *the following situations:*

37 (A) *In the case of a hospital, by the hospital to members of its*
38 *medical staff.*

1 (B) *In the case of a group medical practice, by the practice to*
2 *prescribing health care professionals that are members of the*
3 *practice.*

4 (C) *In the case of Medicare prescription drug plan sponsors*
5 *or Medicare Advantage organizations, by the sponsor or*
6 *organization to pharmacists and pharmacies participating in the*
7 *network of the sponsor or organization and to prescribing health*
8 *care professionals.*

9 (2) *The exceptions set forth in this subdivision are adopted to*
10 *conform state law with the provisions of Section 1860D-4(e)(6)*
11 *of the Medicare Prescription Drug, Improvement and*
12 *Modernization Act of 2003 (42 U.S.C. Sec. 1395w-104) and are*
13 *limited to drugs covered under Part D of the federal Medicare*
14 *Program that are prescribed to Part D eligible individuals (42*
15 *U.S.C. Sec. 1395w-101).*

16 (3) *The exceptions set forth in this subdivision shall not be*
17 *operative until the regulations required to be adopted by the*
18 *Secretary of the United States Department of Health and Human*
19 *Services, pursuant to Section 1860D-4(e) of the Medicare*
20 *Prescription Drug, Improvement and Modernization Act of 2003*
21 *(42 U.S.C. Sec. 1395W-104) are effective. If the California*
22 *Health and Human Services Agency determines that regulations*
23 *are necessary to ensure that implementation of the provisions of*
24 *paragraph (1) is consistent with the regulations adopted by the*
25 *Secretary of the United States Department of Health and Human*
26 *Services, it shall adopt emergency regulations to that effect.*

27 (f) “Health care facility” means a general acute care hospital,
28 acute psychiatric hospital, skilled nursing facility, intermediate
29 care facility, and any other health facility licensed by the State
30 Department of Health Services under Chapter 2 (commencing
31 with Section 1250) of Division 2 of the Health and Safety Code.

32 (g) A violation of this section is a public offense and is
33 punishable upon a first conviction by imprisonment in the county
34 jail for not more than one year, or by imprisonment in the state
35 prison, or by a fine not exceeding fifty thousand dollars
36 (\$50,000), or by both that imprisonment and fine. A second or
37 subsequent conviction is punishable by imprisonment in the state
38 prison or by imprisonment in the state prison and a fine of fifty
39 thousand dollars (\$50,000).

1 *SEC. 3. Section 2 of this bill incorporates amendments to*
2 *Section 650 of the Business and Professions Code proposed by*
3 *both this bill and AB 2282. It shall only become operative if (1)*
4 *both bills are enacted and become effective on or before January*
5 *1, 2007, (2) each bill amends Section 650 of the Business and*
6 *Professions Code, and (3) this bill is enacted after AB 2282, in*
7 *which case Section 1 of this bill shall not become operative.*

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